# FY2003-2004 Tennessee Weighted Caseload Study Update: District Public Defenders



John G. Morgan Comptroller of the Treasury Office of Research February 2005



#### STATE OF TENNESSEE

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February 2, 2005

The Honorable John S. Wilder Speaker of the Senate The Honorable Jimmy Naifeh Speaker of the House of Representatives and Members of the General Assembly State Capitol Nashville, Tennessee 37243

#### Ladies and Gentlemen:

Transmitted herewith is the 2002-03 Weighted Caseload Study Update for the district public defenders, a special study prepared by the Office of Research as required by Tennessee Code Annotated, Section 16-2-513. The study compiles and analyzes the dispositions, workload, and Full Time Equivalents (FTEs) for each judicial district and the state as a whole. It reports dispositions, workload, and subsequent need for FTEs by district. It also examines compliance with indigence determination procedures, representation in juvenile courts, and other issues specific to the role of the public defender. I hope you find this information helpful.

Sincerely,

John G. Morgan Comptroller of the Treasury

### FY2003-2004 Tennessee Weighted Caseload Study Update:

**District Public Defenders** 



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#### **Executive Summary**

Tennessee Code Annotated (T.C.A.) 16-2-513 requires the Comptroller of the Treasury to maintain and update a weighted caseload study for the state judges, district attorneys, and public defenders. In 1999, three independent consultants conducted separate time or caseweighing studies for each group. However, because of the lack of uniform case disposition data, the Comptroller's office could not update the original public defenders' study until 2004. The public defenders' study and methodology differ from that of the judges and district attorneys. Each study calculates Full Time Equivalents (FTEs) based on unique case types and methodology established by consultants in the original studies.

Prior to the original study, Tennessee had no uniform case standards, posing many problems in the judicial system, and making it difficult for all the consultants to conduct the respective studies. In response to this problem in 1992, the General Assembly instituted uniform case standards under *T.C.A.* 16-1-117 for all courts. *T.C.A.* 16-2-513 requires all courts, the Administrative Office of the Courts, the Council for Juvenile and Family Court Judges, and the TDPDC to provide the Comptroller's Office case disposition data according to the uniform case standards.

Public Act 588 of 1989 created the Tennessee Public Defenders Conference (TDPDC). Since then, policy makers sought to establish an equitable means to determine the need for resources. In the past, the Tennessee General Assembly calculated the number of public defenders needed by applying a percentage to the number of district attorneys in each judicial district; initially it was 50 percent of district attorneys, then 75 percent. In 1994, the General Assembly amended the statute to employ a population-based formula that called for one public defender for every 26,675 people in a district. However, the formula was never instituted because of budget constraints.

The 1998 appropriations bill required the Comptroller's Office to conduct a weighted caseload study for public defenders. The Comptroller's Office contracted with the Spangenberg Group in April 1999 to conduct the study and determine the need for public defender resources, or full time equivalents (FTEs.) The ability to *weight* cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases, and time required to handle each type of case.

The weighted caseload study calculates the resources, or FTEs, districts need by dividing the total number of case dispositions for the most recent fiscal year by the workload standard established by the consultants. (See pages 2-8 of the report for a detailed

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<sup>&</sup>lt;sup>1</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, pp. 48-49.

description of the methodology). However, the consultants' report emphasizes that these calculations provide only a base from which to estimate the need for resources. Analysts and policy makers must consider other factors that influence the workload of attorneys, such as the amount of additional local and federal funding, support staff, technology, and local rules in conjunction with quantitative methodology. (See Appendix B – Factors Affecting Workload for a more complete list of additional factors.)

#### **Analysis and Conclusions**

The 2004 public defender weighted caseload data showed 156,585 total dispositions. The largest number of dispositions for FY 04 was misdemeanors with 90,976 dispositions statewide. The case type with the largest increase in dispositions since 1998 is capital crimes/ first-degree murder cases with an increase of 45 dispositions or 750 percent. (See page 9.)

**Public Chapter 821 of 2004 created 18 additional assistant public defender positions, effective July 1, 2004.** Legislation required the executive director of the TDPDC to file a report by October 1, 2004, with recommendations regarding the judicial district designation of such positions. "As early as is practicable during the first session of the one hundred fourth General Assembly" the General Assembly is required to enact legislation to specify and assign the 18 positions to judicial districts. Because these positions remained unfilled in FY 2004, they are not included in the formula to calculate the number of staff needed in this update. (See page 13.)

There is a statewide shortage of 162 public defenders, which is most prevalent in urban (6th, 11th, and 20th) judicial districts. In 2004, Tennessee's public defenders carried workloads in excess of nationally recognized standards. Lack of resources and high workloads compromise the state's ability to use limited indigent defense resources efficiently. It is not clear how much of the \$12,016,121 received by private attorneys in FY 2004 Indigent Defense Fund reimbursements resulted from insufficient public defender resources. Reimbursement procedures set forth in *T.C.A.* 40-14-208 do not require application for reimbursement for the Indigent Defense funds to include a reason for the appointment of a private attorney. Therefore, AOC officials cannot verify compliance with the law regarding use of these funds. Judges in both adult criminal and juvenile courts report that public defenders often are unavailable to accept cases resulting in the appointment of private council to represent indigent defendants. (See pages 14-15.)

**Many juvenile courts do not have adequate public defender representation.** According to the Public Defenders Conference, the 15<sup>th</sup>, 20<sup>th</sup>, and 30<sup>th</sup> judicial districts have permanently assigned public defenders in their juvenile courts. When surveyed by the

CJFCJ in 2004, at the request of the Comptroller's office, judges in 17 other districts reported having PDs permanently in their courts. In these courts, juveniles facing delinquency charges have PD representation unless they waive the right to counsel.

In the remaining districts without permanent PDs, private attorneys most often represent juveniles who exercise their right to counsel. In responses to the 2004 survey, judges in juvenile courts reported that they appoint private attorneys for one of two reasons: 1) PDs are not available at all or within a reasonable amount of time, or 2) PDs do not have adequate skills or knowledge to represent defendants in juvenile court. (See pages 15-16.)

Not all courts comply with the Tennessee requirements for determination of indigence procedures. Consultants during the original study found that "screening for indigency is cursory at best." Unfortunately, Tennessee does not have a system of accountability or any penalty for noncompliance with the law. As a result, public defenders, or private counsel through the Indigent Defense fund, represented 67 percent of all criminal defendants convicted of felonies in 2003 without knowing if all the defendants were truly indigent.<sup>2</sup> (See pages 16-17.)

Some public defenders' offices lack adequate support staff. *T.C.A.* 8-14-204 (c) (4) allows district public defenders to hire attorneys into vacant investigator positions to act as assistant public defenders and to be compensated as such. According to the Public Defenders' Conference, in 2004, 11 districts had attorneys in investigator positions who were carrying caseloads. Of those 11, four had no investigator positions other than those occupied by attorneys acting as defenders.<sup>3</sup> The original report noted "not hiring investigators" compromises the function of representation.<sup>4</sup> (See pages 17-18.)

The court system lacks a uniform information system to collect disposition data. As of 2005, the public defenders conference information system, Prolaw, is not integrated with the Tennessee Court Information System (TnCIS),<sup>5</sup> nor are the information systems for the big four urban counties and the Council of Juvenile and Family Court Judges. Thus, several different information systems handle disposition data on the same individuals charged with one or more criminal offenses, leading to a duplication of effort and increasing chances for data entry errors. (See page 18.)

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<sup>&</sup>lt;sup>2</sup> Administrative Office of the Courts, 2003-04 Felony Convictions Methods of Representation, 2004.

<sup>&</sup>lt;sup>3</sup> TNDPD Conference, District Public Defender Office Staffing 2004-05, received in email to author October 21, 2004.

<sup>&</sup>lt;sup>4</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 17; 69.

<sup>&</sup>lt;sup>5</sup> TnCIS is the statewide court information system available to all courts in the state who choose it.

#### Recommendations

The General Assembly may wish to:

- Ensure that there are enough public defenders to handle the workload based on the need identified in the FY 2004 weighted caseload study update.
- Amend *T.C.A.* 40-14-202 regarding determination of indigence and appointment of public defenders to ensure accountability of courts' compliance and authorize penalties for non-compliance.
- Fund more support staff for public defenders to increase efficiency and reduce cost.
- Authorize a study to determine the number of private attorneys reimbursed from the indigent defense fund because of a lack of public defenders.

The AOC should integrate public defenders' case information with the Tennessee Court Information System (TnCIS).

See pages 18-19 for a complete list of all recommendations.

The Tennessee District Public Defender's Conference reviewed a draft of this report, and provided comments and suggestions, but chose not submit formal response letter.

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#### Introduction

Tennessee Code Annotated (T.C.A.) 16-2-513 requires the Comptroller of the Treasury to maintain and update a weighted caseload study for the state judges, district attorneys, and public defenders. In April 1999, consultants from the Spangenberg Group conducted the original case-weighing study, designed to assess objectively the need for public defender resources. However, because of the lack of uniform case disposition data among judicial agencies, the Comptroller's office could not update the original study until 2004.

Tennessee law requires weighted caseload study updates for the state judges, district attorneys, and public defenders. In 1999, three independent consultants conducted separate time or case-weighing studies for each group. The public defenders study and methodology differ from that of the judges and district attorneys. Each study calculates Full Time Equivalents (FTEs) based on unique case types and methodology established by consultants in the original time studies.

#### Background

Public Act 588 of 1989 created the Tennessee District Public Defenders Conference (TDPDC). Since then, policy makers sought to establish an equitable means to determine the need for resources. In the past, the Tennessee General Assembly calculated the number of public defenders needed by applying a percentage to the number of district attorneys in each judicial district; initially it was 50 percent of district attorneys, then 75 percent. In 1994, the General Assembly amended the statute to employ a population-based formula that called for one public defender for every 26,675 people in a district. However, the formula was never instituted because of budget constraints.

The 1998 appropriations bill required the Comptroller's Office to conduct a public defenders weighted caseload study to provide policy makers an objective means to determine the need for judicial resources. The Comptroller's Office contracted with the Spangenberg Group in 1999 to conduct a weighted caseload study for the TDPDC and determine the need for public defender resources, or full time equivalents (FTEs.) The ability to *weight* cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases, and time required to handle each type of case.

Prior to the original study, Tennessee had no uniform case standards, posing many problems in the judicial system, and making it difficult for all the consultants to conduct

the respective studies.<sup>1</sup> In response to this problem, the General Assembly in 1992 instituted uniform case standards under *T.C.A.* 16-1-117 for all courts. *T.C.A.* 16-2-513 requires all courts, the Administrative Office of the Courts, the Council for Juvenile and Family Court Judges, and the TDPDC to provide the Comptroller's Office case disposition data according to the uniform case standards.

The weighted caseload study calculates the resources, or FTEs, districts need by dividing the total number of case dispositions for the most recent fiscal year by the workload standard established by the consultants. However, the consultants' report emphasizes these calculations provide only a base from which to estimate the need for resources. Analysts and policy makers must consider other factors that influence the workload of attorneys, such as the amount of additional local and federal funding, support staff, technology, and local rules in conjunction with quantitative methodology. (See Appendix B – Factors Affecting Workload for a more complete list of additional factors.)

#### Methodology

This update uses the original methodology and formula recommended by the Spangenberg Group. The following is an overview of the methodology:

- Met with the Tennessee District Public Defenders Conference (TDPDC)
- Collected and analyzed case disposition data for FY 2004 from the TDPDC
- Researched T.C.A. and any changes in statute relative to PD staffing or workload
- Analyzed qualitative issues
- Surveyed Public Defenders and Juvenile Court Judges

The Spangenberg Group employed a "time-based" methodology to conduct the public defenders' weighted caseload "time study." Over the years, the Spangenberg Group concluded "the time-recorded case weighting method" is the most thorough and complete method to determine valid, empirical workload measures that can be translated into caseload standards for public defender programs.<sup>2</sup>

Originally, a steering committee worked with consultants from the Spangenberg Group to coordinate the study. The consultants conducted a time study for a period of seven weeks (from January 11 to February 26, 1999). The sample included nine judicial

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<sup>&</sup>lt;sup>1</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, pp. 48-49.

<sup>&</sup>lt;sup>2</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 11.

districts – the 2<sup>nd</sup>, 8<sup>th</sup>, 5<sup>th</sup>, 13<sup>th</sup>, 16<sup>th</sup>, 20<sup>th</sup> 24<sup>th</sup>, 26<sup>th</sup>, and 30<sup>th</sup> districts.<sup>3</sup> During the study, attorneys kept track of all their time by type of activity, type of case, and disposition. For example, a type of activity would include arraignment, legal research, and sentencing. Sample dispositions include bound over, acquitted, convicted. (See Appendix C– Case Activity Codes and Appendix D Daily Activity Log for complete list of activity types and the time log, respectively.)

The steering committee narrowed all cases into the following major categories for the time study. They are:

- 1. Capital/First Degree Murder
- 2. Felony A
- 3. Felony B
- 4. Felony C/D/E
- 5. Misdemeanors
- 6. Juvenile
- 7. Probation Violations
- 8. Post Judgment Actions, and
- 9. Other

#### Counting Dispositions versus Filed Cases

The methodology employed by the Spangenberg Group in the time study counted cases by dispositions. The time study measured the average amount of time spent to dispose of a case. While no study can calculate workload exactly, dispositions more accurately reflect the workload of attorneys than filings. Counting filings reflects only the number of cases opened during a given time period, not the time and work to complete the case. Cases can linger without action for months after filing. Dispositions reflect the total time spent working on a case, even if the case is filed in a previous year. In addition, if a case is filed and disposed in the same year it will be counted in the number of disposed cases in the weighted caseload study.

#### Disposition Methodology

Exhibit 1 provides the basic definitions of calculations used in the methodology, followed by an overview of the methodology used to estimate the public defender resources needed.

<sup>&</sup>lt;sup>3</sup> Originally there were 10 districts, that included the 19<sup>th</sup> district, but because of a tornado that caused serious damage to the courts and offices in that district, they were excluded.

Exhibit 1

Data Element	Description & Source	Formula
Case Weight	Average time required to dispose of different case types based on attorney time divided by number of dispositions by case type reported on the Daily Activity Log sheet during the time study.	Total case hours ÷ total dispositions in time study
Case Dispositions	Closed cases.	Dispositions counted by highest class charge at the time the case is closed.
Annual Number of Case Dispositions	Total annual number of case dispositions by case types collected from the Public Defenders Conference.	Add total dispositions from each judicial district by case types.
Public Defender Year Value	The total amount of time available for processing cases per full-time attorney based on the State standard 7.5 hour workday.	See Exhibit 2.
Workload Standard	The total number of cases an attorney should be able to handle in a year for a single case type if that were the only type of case handled.	Workload Standard = Attorney Year ÷ case weight
FTEs (Full Time Equivalents)	The total number of resources/attorneys needed to handle workload.	1635 hours ÷ Workload Standard (PD Year Value)

#### Case Weights

The formula to determine the projected workload and resulting standard for each type of case uses "attorney-time-per-disposition," calculated by adding the total hours attributed to a case type during the time study and dividing that number by the total number of dispositions for the same case-type during the time study period.<sup>4</sup> To determine case weights for the various case types attorneys kept up with all the time they spent on cases and the number of cases disposed during the time study by the different case types listed on page 3.

<sup>4</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 53.

The following is an example of how a Felony A case is calculated:

The total time spent on felony A cases during the time study = 2,990:46 (hours: minutes.) The total dispositions reported during the same time = 86. Therefore,

Case weight =  $2990:46 \div 86$ , or 29:57 per case.

While some cases may take more or less than 30 hours, this is an average amount of time as calculated by the time study.

#### Case Dispositions

Case dispositions are counted by the highest charge in the case *at the time of disposition* (when the case is closed). For example, a person may be initially charged with one felony A count, one felony B count, and two misdemeanor counts. If at trial the felony A count is dismissed and the defendant is found guilty on all other counts, the case is counted as a felony B case at disposition.

#### Attorney Year

The attorney year, or amount of time an attorney has to devote to cases, must be determined to calculate the workload standards for the different cases. Tennessee public defenders work a 7.5-hour workday, and receive ten annual leave days and five annual sick days. In addition, Tennessee observes 12 state holidays. Public defenders also are paid for five days of official conferences and for ten days of continuing legal education training each year.

Based on these figures, the Public Defender Weighted Caseload Steering Sub-Committee determined that the average Tennessee public defender works 1,635 hours per year. Exhibit 2 displays the formula and calculations used to determine the total attorney hours per year:

Exhibit 25

	Total Available Attorney Hours Per Year					
		<u>Calculation</u>	<u>Hours</u>			
A.	Work Day		7.5			
В.	Work Week	(Row A x 5)	37.5			
C.	Work Year (Prior to Leave Time Allowance)	(Row B x 52)	1,950			

<sup>&</sup>lt;sup>5</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 55.

Leave T	<u>ime</u>	<u>Days Per Year</u>	<u>Hours</u>
D.	State Holidays	12	90
E.	Annual Leave	10	75
F.	Sick Leave	5	37.5
G.	Official Conferences	5	37.5
H.	Continuing Legal Education Training	10	<i>7</i> 5
I.	Total All Leave	42	315
		<u>Calculation</u>	<u>Hours</u>
Total Av	ailable Attorney Hours Per Year	(Row C - Row I)	1,635

260 days (total workdays in a year) – 42 (total training and leave days per year) = 218 days.

#### Workload Standard Formula

The original consultant's report defined workload standards as "the average number of cases that a single attorney can be expected to handle during the course of one year if that attorney handles only that type of case." Once the case weights and attorney year are calculated, the workload standards can be calculated. The workload measure for each case type is calculated by dividing the attorney year by the case weight for each case type.<sup>6</sup>

Workload Standard = 1635 ÷ attorney hours per disposition (case weight)<sup>7</sup>

*Example:* case type Felony A workload standard is calculated as follows:

$$1635 \div 29:57 = 55$$

The consultants attempted to perform this calculation for each case type.<sup>8</sup> Because of the small sample size and shortness of the time study, it was not possible to calculate the workload for some case types. For example, there was not enough data from the time

<sup>&</sup>lt;sup>6</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 55-56.

<sup>7</sup> Ibid.

<sup>&</sup>lt;sup>8</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, Table 6-3, p. 56.

study to develop a work measure for Capital/First Degree Murder (death penalty) and appeal cases. Thus, the consultants established a workload measure by using averages of standards from other states, which equaled five cases per year.<sup>9</sup>

Determining accurate workload measures for the three categories of felonies also proved problematic. To calculate a more accurate workload The Spangenberg Group added all types of felonies to calculate one workload standard. This resulted in a workload standard of 233 cases per year for felony cases.<sup>10</sup>

In addition, analysis of time study data showed the workload for misdemeanor cases to be 850 per year. Based on 176 workdays available per year, attorneys would need to dispose of about five cases per day, if those were the only types of cases an attorney handled. The Spangenberg Group found this to be excessive, at approximately twice the number found in studies conducted in 12 other states where the standards were usually about 400.<sup>11</sup> Therefore, they adjusted the workload standard to 500 cases per year.

Based on these adjustments Exhibit 3 lists the workload standard for each case type used in the formula to calculate FTEs.

Exhibit 3

Case Types and Workload Standards to Estimate Public Defender Staffing Needs <sup>12</sup>					
Case Type	Workload Standard <sup>13</sup>				
Capital/1st Degree Murder	5				
Felony	233				
Misdemeanor	500				
Juvenile	273				
Appeals	25				
Other	795				

*Formula to Calculate Full Time Equivalents (FTEs)* 

The formula used to calculate the number of attorney resources (FTEs needed) is the total dispositions for the fiscal year (as reported by the Public Defenders Conference by

<sup>&</sup>lt;sup>9</sup> Ibid, pp. 60-61, and 64.

<sup>&</sup>lt;sup>10</sup> Ibid, p. 64.

<sup>11</sup> Ibid.

<sup>&</sup>lt;sup>12</sup> Ibid, p. 65.

<sup>&</sup>lt;sup>13</sup> The total number an attorney should be able to handle if they handled that case type only.

Case Type) ÷ Workload Standard established in original consultants' study. <sup>14</sup> More simply put:

#### (FTEs) = Total Dispositions ÷ Workload Standard

Using the disposition data from FY 1998, the workload standards established in the time study, and number of attorneys at that time, the consultants determined that the state needed 56 additional assistant public defenders. <sup>15</sup>

The Spangenberg Group "strongly" recommended against using the formula to calculate the FTEs for each district because of the many other factors that affect workload. Instead, the report suggested calculating total state resources needed, and let "policy-makers in conjunction with representatives from TDPDC and the Weighted Caseload Study Steering Committee" decide how to allocate resources among the different districts. (See Appendix E – District-by-District Public Defender Staffing Estimates and Appendix F for a map of Tennessee Judicial Districts.)

The main factors the report cited affecting workload include the source and amount of additional local funding available to a judicial district and number of support staff, especially investigators. <sup>17</sup> However, at the request of the General Assembly the Spangenberg Group provided a list of FTEs needed by district in Appendix D of the original report. Those numbers, along with a comparison of 2004 estimated staffing needs, appear in the Analysis and Conclusions section of this report.

<sup>&</sup>lt;sup>14</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 65.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>&</sup>lt;sup>17</sup> Ibid, p. 66.

#### **Analysis and Conclusions**

#### Dispositions

The 2004 public defender weighted caseload data showed 156,585 total dispositions.

Exhibit 4 shows FY 2004 statewide dispositions by case type.

Exhibit 4

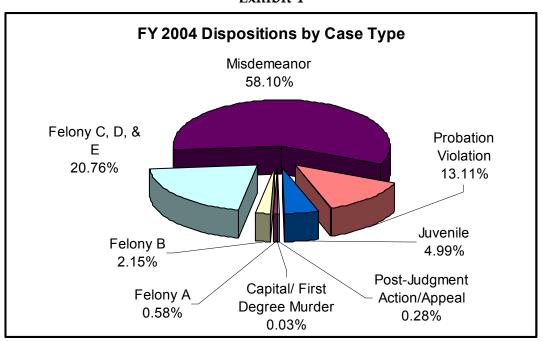


Exhibit 5: Total Dispositions by Case Type and 1998-2004 Changes

Total State Dispo	Change in Case				
by Case Type an	d Year		Dispositions by Year		
Case Type	FY 98	FY 04	FY 98 to	FY 04	
			Number	Percent	
Capital/1st Degree Murder	6	51	45	750	
Felony A	1,078	909	-169	-15.7	
Felony B	3,749	3,367	-382	-10.2	
Felony C, D, & E	25,144	32,510	7,366	4.0	
Probation Violation/Other	8,038	20,525	12,487	155.0	
Post-Judgment Action	222	440	218	98.2	
Misdemeanor	70,225	90,976	20,751	29.5	
Juvenile	4,469	7,807	3,338	74.7	
Total	112,931	156,585	43,654	38.7	

**Exhibit 6: Total Dispositions by District** 

Judicial Districts	Felony A	Felony B	Felony C, D, & E	Probation Violation/ Other	Appeals/ Post- Judgment	Misdemeanor	Juvenile	Capital/ First Degree murder	Totals
1	5	79	840	176	2	1,636	64	0	2,802
2	11	47	637	555	43	2,729	109	0	4,131
3	13	45	718	448	9	3,059	579	0	4,871
4	12	70	769	575	11	2,038	98	0	3,573
5	3	26	527	289	48	2,168	177	0	3,238
6	31	304	2,594	1,890	9	10,839	1,373	0	17,040
7	7	24	635	820	0	2,238	68	0	3,792
8	13	44	758	105	0	1,590	132	0	2,642
9	5	34	416	148	31	769	54	1	1,458
10	10	63	726	413	4	1,097	262	0	2,575
11	86	342	2,912	1,005	33	7,440	1,093	0	12,911
12	12	98	578	633	0	1,590	76	0	2,987
13	20	30	976	765	19	1,938	107	0	3,855
14	11	26	445	228	0	979	102	0	1,791
15	13	53	1,108	745	3	2,424	247	0	4,593
16	23	105	766	48	2	1,413	3	0	2,360

17	43	128	918	458	27	1,930	421	0	3,925
18	41	118	1,579	602	0	1,212	0	0	3,552
19	23	92	891	723	9	3,409	0	4	5,151
20	163	464	3,684	2,541	29	14,615	1,640	0	23,136
21	8	54	498	356	4	874	70	0	1,864
22	18	67	788	997	6	3,022	0	1	4,899
23	18	71	487	649	14	1,654	379	0	3,272
24	11	73	559	244	25	1,135	29	0	2,076
25	13	61	899	469	21	1,614	391	0	3,468
26	9	97	711	721	24	1,547	75	1	3,185
27	16	63	290	104	8	528	42	0	1,051
28	0	4	512	236	9	627	65	0	1,453
29	3	54	439	171	10	663	129	0	1,469
30	263	616	4,761	3,300	38	14,076	0	44	23,098
31	5	15	89	111	2	123	22	0	367
Total	909	3,367	32,510	20,525	440	90,976	7,807	51	156,585

Source: Chart produced by Office of Research Staff with data from the TDPDC.

The largest number of dispositions for FY 04 was misdemeanors with 90,976 dispositions statewide. The case type with the largest increase in dispositions since 1998 is capital crimes/ first-degree murder cases with an increase of 45 dispositions or 750 percent.

#### Full Time Equivalents

Based on FY 2004 case disposition data and workload, the state's deficit of public defenders has increased since 1998. (See Exhibit 7.)

Exhibit 7: Yearly Trend in the Need for Public Defender Resources (FTEs)

Yearly Trend in Number of Public Defenders Resources (FTEs)							
State Net FTEs FY 98 FY04 Change							
Total Public Defenders (FTEs)	250	260	10				
Total Public Defenders Needed	305.64	422.14	116.50				
Net excess or (deficit)	(55.64)	(162.14)	106.50				

Source: Calculations by Office of Research staff based on data from TDPDC, 2004

Exhibit 8: Excess or Deficit Full Time Equivalents (FTEs) by District for FY 98-FY04

Comparison Between Estimated PD FTEs Needed for FY '98 and FY '04							
Judicial District	Current Staff	FTEs Excess/Deficit '98	Estimated FTEs Excess/Deficit '04 (Rounded to nearest whole FTE)	Decrease or Increase in Deficit			
1	6	-2	-2	0			
2	8	-2	-3	1			
3	6	-2	-6	4			
4	5	-2	-4	2			
5	3	-1	-7	5			
6	22	-3	-20	17			
7	4	0	-5	5			
8	4	-1	-3	2			
9	4	-1	-1	0			
10	7	0	-1	1			
11	13	-2	-23	21			
12	4	-1	-3	2			
13	5	-1	-5	4			
14	3	0	-2	2			
15	7	-2	-5	3			
16	5	-1	-2	1			
17	4	-2	-8	6			
18	4	-2	-7	5			
19	5	-4	-7	3			
20	42	-9	-17	8			
21	4	-2	-1	-1			
22	5	-2	-6	4			
23	4	-1	-4	3			
24	5	0	-1	1			
25	5	-3	-5	2			
26	7	-2	-1	-1			
27	5	0	1	-1			
28	3	-1	-1	0			
29	3	-1	-2	1			
30	59	-6	-11	5			
31	2	0	1	-1			
Total	255	-56	-162	106			

Source: Calculations by Office of Research staff based on data provided by TDPD.

#### **Additional Positions**

Public Chapter 821 of 2004 created 18 additional assistant public defender positions, effective July 1, 2004. Legislation required the TPDPC executive director to file a report by October 1, 2004, with recommendations regarding the judicial district designation of such positions. "As early as is practicable during the first session of the one hundred fourth General Assembly" the General Assembly is required to enact legislation to specify and assign the 18 positions to judicial districts. Because these positions remained unfilled in FY 2004, they are not included in the formula to calculate the number of staff needed in this update. Exhibit 9 shows the TDPDC's recommended allocation of the new positions by district as well as the distribution of three positions previously held by appellate attorneys on contract. According to TDPDC staff, the conference terminated these contracts and reallocated the funds to create three additional PD positions.

Exhibit 9

Proposed Allocation of New Attorney Positions Compared to 2004 Estimated FTE Excess/Deficit							
District	New Attorney Positions for 2005	Estimated 2004 PD FTEs Excess/Deficit	District	New Attorney Positions for 2005	Estimated 2004 PD FTEs Excess/Deficit		
1	1	-2	17	1	-8		
2	1	-3	18	1	-7		
3	1	-6	19	2	-7		
4	1	-4	20	0	-17		
5	1	-7	21	1	-1		
6	1	-20	22	1	-6		
7	0	-5	23	1	-4		
8	1	-3	24	0	-1		
9	0	-1	25	1	-5		
10	0	-1	26	0	-1		
11	0	-23	27	0	1		
12	1	-3	28	1	-1		
13	1	-5	29	1	-2		
14	1	-2	30	0	-11		
15	0	-5	31	0	1		
16	1	-2	Totals	21	-162		

Source: Calculations by Office of Research staff based on data provided by TDPDC.

#### Qualitative Issues

As noted, "the ability to *weight* cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases handled by the program. However, this ability is particularly valuable in light of numerous factors affecting indigent defense caseloads nationally and locally." The original report listed several elements that affect workload other than cases such as work environment, travel time, and available support staff. (See Appendix B – Factors Affecting Workload.)

There is a statewide shortage of 162 public defenders, which is most prevalent in urban (6<sup>th</sup>, 11<sup>th</sup>, and 20<sup>th</sup>) judicial districts. T.C.A 8-14-201 and the United Sates Constitution require the state to provide an attorney to represent any person charged with the commission of a crime who cannot afford a private attorney. In 2004, Tennessee's public defenders carried workloads in excess of nationally recognized standards. For example, according to the workload standard, in District 6 (Knox County) the misdemeanor caseload (64 percent of total dispositions) requires all 22 PD positions to handle properly. Analysis shows that district needs 20 additional PDs to meet workload standards for the number of dispositions in FY 2004. Lack of resources and high workloads compromise the state's ability to use limited indigent defense resources efficiently. In Fiscal Year 2004, the AOC paid private attorneys \$12,016,121 from of the Indigent Defense fund for handling 24,495 cases traditionally covered by public defenders.<sup>19</sup> These numbers represent 53 percent of the District Public Defenders' budget and 16 percent of total public defender dispositions for the same fiscal year.<sup>20</sup> According to Indigent Defense Fund reimbursement data, the average claim for indigent defense in case types PDs would handle was \$490 per case in FY 2004. The TDPDC reported an average cost of \$183 per case actually handled by a public defender for that same period. 21

It is not clear how much of the \$12,016,121 received by private attorneys in FY 2004 Indigent Defense Fund reimbursements resulted from insufficient public defender resources. Supreme Court Rule 13 (see Appendix G) authorizes the Supreme Court to reimburse private attorneys who represent indigent defendants when there is a conflict

<sup>&</sup>lt;sup>18</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 24-25.

<sup>&</sup>lt;sup>19</sup> State of Tennessee, Executive Secretary of the Supreme Court, FY 2004 Indigent Defense Funds Claims Statistics, 2004

<sup>&</sup>lt;sup>20</sup> TDPDC Disposition Data, received in email to author on September 30, 2004 and 2003-04 TDPDC budget estimates in *State of Tennessee Budget* 2004-05.

<sup>&</sup>lt;sup>21</sup> State of Tennessee, Executive Secretary of the Supreme Court, FY 2004 Indigent Defense Funds Claims Statistics, 2004, and TDPDC Cost per Case 2004.

of interest or some other legal reason the public defender is not able to represent the individual. Reimbursement procedures set forth in *T.C.A.* 40-14-208 do not require application for reimbursement for the Indigent Defense funds to include a reason for the appointment of a private attorney. Therefore, AOC officials cannot verify compliance with the law regarding use of these funds.

The District Public Defenders' Conference has no data on the number of private attorneys representing indigent defendants appointed because of insufficient public defender resources. The Executive Director, however, indicates that judges in some districts appoint private attorneys in three out of four cases because the shortage of public defenders is widely acknowledged. <sup>22</sup> In addition, juvenile cases account for \$1,474,264, or 8.1 percent, of the FY 2004 reimbursement from the Indigent Defense Fund. <sup>23</sup> Thirty percent of juvenile court judges responding to a 2004 Office of Research survey indicated that PD staffing in their district was not adequate to cover juvenile courts, resulting in appointment of private attorneys in most cases.

Judges in both adult criminal and juvenile courts report that public defenders often are unavailable to accept cases resulting in the appointment of private council to represent indigent defendants.

Many juvenile courts do not have adequate public defender representation. Juvenile defendants have the right to counsel by law under *T.C.A.* 37-1-127. Although the original 1999 public defender weighted caseload study, a report by the Comptroller's Office in January 2004, and interviews with judges from the Council of Juvenile and Family Court Judges (CJFCJ) indicated that some juvenile defendants lacked any attorney representation, recent data shows that most juveniles have access to counsel if they want it. However, in most cases, juvenile court judges appoint private attorneys to represent juveniles facing delinquency, unruly behavior, or status offense charges. Public defenders handled 7,807 juvenile delinquent cases in FY 2004 (or 13 percent) of the 58,683 delinquency, status offense, and unruly behavior cases reported in the Council of Juvenile and Family Court Judges' annual report for that year. <sup>24</sup> Indigent Defense Fund data showed that private attorneys filed 5,658 claims for juvenile felony and misdemeanor cases costing a total of \$931,499 in FY 2004.<sup>25</sup>

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<sup>&</sup>lt;sup>22</sup> Phone Interview, Andy Hardin, Executive Director, Tennessee District Public Defenders Conference, 6.29.04.

<sup>&</sup>lt;sup>23</sup> State of Tennessee, Executive Secretary of the Supreme Court, FY 2004 Indigent Defense Funds Claims Statistics, 2004.

<sup>&</sup>lt;sup>24</sup> TDPDC FY 2004 disposition data and CJFCJ 2004 Annual report.

<sup>&</sup>lt;sup>25</sup> State of Tennessee, Executive Secretary of the Supreme Court, FY 2004 Indigent Defense Funds Claims Statistics, 2004.

According to the Public Defenders Conference, the 15th, 20th, and 30th judicial districts have permanently assigned public defenders in their juvenile courts. When surveyed by the CJFCJ in 2004, at the request of the Comptroller's office, judges in 17 other districts reported having PDs permanently in their courts. In these courts, juveniles facing delinquency charges have PD representation unless they waive the right to counsel.

In the remaining districts without permanent PDs, private attorneys most often represent juveniles who exercise their right to counsel. In responses to the 2004 survey, judges in juvenile courts reported that they appoint private attorneys for one of two reasons: 1) PDs are not available at all or within a reasonable amount of time, or 2) PDs do not have the skills or knowledge required to adequately represent defendants in juvenile court. When asked how best to resolve the issue of public defender representation in their courts, all responding judges without permanently assigned PDs, indicated that they needed PDs dedicated to their courts and specifically trained to handle juvenile cases. <sup>26</sup>

Not all courts comply with Tennessee requirements for determination of indigence procedures. *T.C.A.* 4-14-202 requires that after September 1, 1992, any person "financially unable to obtain the assistance of counsel ... to complete the uniform affidavit of indigency." The uniform affidavit of indigency is also required under Supreme Court Rule 13. In addition, this section of the code requires a hearing to determine indigence in all felony cases. Consultants during the original study found that "screening for indigency is cursory at best." Unfortunately, Tennessee does not have a system of accountability or any penalty for noncompliance with the law. As a result, public defenders, or private counsel through the Indigent Defense fund, represented 67 percent of all criminal defendants convicted of felonies in 2003 without knowing if all the defendants were truly indigent.<sup>27</sup>

Public defenders, in response to a 2004 survey, report that if a defendant requests an appointed attorney, they usually receive one, regardless of their true financial status. Only one responding district reported that criminal court judges conducted the required hearings in felony cases. However, that same district reported no compliance with indigence determination procedures in general sessions regardless of the type of charges. One criteria used in every court attended by responding PDs is whether the accused is incarcerated. Judges assume a defendant who has not posted bond is

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<sup>&</sup>lt;sup>26</sup> CJFCJ, Juvenile Court Survey: Adequacy of Public Defender Representation In Juvenile Courts, October 2004.

<sup>&</sup>lt;sup>27</sup> Administrative Office of the Courts, 2003-04 Felony Convictions Methods of Representation, 2004.

indigent, and often do not even require a sworn affidavit. Even if the defendant fills out and signs an affidavit, no one investigates or confirms the validity of the affidavit. When public defenders do investigate, if they suspect false statements, they often find the defendant has misstated financial status and successfully request removal from those cases. However, PD offices lack adequate resources to do this regularly.

Public Defenders report a perception that judges appoint them and private attorneys to cases as a matter of convenience to the court. Without monitoring of indigence determination and attorney appointing practices, verification of this allegation or actual procedural compliance is impossible.

Some public defenders' offices do not have enough support staff. In the original case-weighing study report, Spangenburg staff recommended, "support staff guidelines be adopted in Tennessee in conjunction with the caseload standards." T.C.A. 8-14-202 (e) authorizes at least one criminal investigator per district and another investigator for every five assistant public defender positions. The TDPDC indicates that it allocates one secretarial position for every three attorneys and one office manager per district. For 2005, six districts received funding for new investigator and secretarial positions based on the allocation of new PD positions, the formula set forth in T.C.A. 8-14-202 (e), and the TDPDC policies.

During the original study, the consultants found that some districts used investigator positions as assistant public defenders because of high caseloads. *T.C.A.* 8-14-204 (c )(4) allows district public defenders to hire attorneys into vacant investigator positions to act as assistant public defenders and to be compensated as such. According to the Public Defenders' Conference, in 2004, 11 districts had attorneys in investigator positions that were carrying caseloads. Of those 11, four had no investigator positions other than those occupied by attorneys acting as defenders.<sup>29</sup> The original report noted "not hiring investigators" compromises the function of representation.<sup>30</sup>

<sup>&</sup>lt;sup>28</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 59.

<sup>&</sup>lt;sup>29</sup> TDPDC, District Public Defender Office Staffing 2004-05, received in email to author October 21, 2004.

<sup>&</sup>lt;sup>30</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, p. 17; 69.

Exhibit 10

Investigator Positions Filled by Attorneys							
Carrying Caseloads							
Attorneys in   Total							
District	Investigator	Investigator					
	Positions	Positions					
1	1	2					
4	1	2					
5	1	2					
9	1	2					
12	1	2					
13*	2	2					
16	1	2					
19	1	2					
21*	2	2					
23*	2	2					
31*	1	1					

Source: Chart produced by Office of Research Staff with data from the TDPDC \*Districts using all investigator positions as assistant public defenders.

#### The court system lacks a uniform information system to collect disposition data.

Currently the public defenders conference information system, Prolaw, is not integrated with the Tennessee Court Information System (TnCIS),<sup>31</sup> nor are the information systems for the big four urban counties and the Council of Juvenile and Family Court Judges. Thus, several different information systems handle disposition data on the same individual charged with a criminal offense/s, leading to a duplication of effort and increasing chances for data entry errors.

#### Recommendations

The General Assembly may wish to ensure that there are enough public defenders to handle the workload based on the need identified in the FY 2004 weighted caseload study update. Proper funding of the public defender system would reduce reliance on private attorneys and make more efficient use of Indigent Defense Fund dollars. The General Assembly may wish to consider allocating excess funds from the Indigent Defense Fund to the Public Defenders Conference to the extent that resources are lacking under the weighted caseload study.

 $^{31}$  TnCIS is the statewide court information system available to all courts in the state who choose it.

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The General Assembly may wish to amend *T.C.A.* 40-14-202 regarding determination of indigence and appointment of public defenders to ensure accountability of courts' compliance and authorize penalties for non-compliance. This may reduce the workload for public defenders and cost to the indigent defense fund.

The General Assembly may wish to fund more support staff for public defenders to increase efficiency and reduce cost. Investigators, paralegals, and legal secretaries can provide essential evidence and research, among other things, to a case at a lower cost than attorneys provide, and increase the efficiency of public defenders' case duties.

The General Assembly may wish to authorize a study to determine the number of private attorneys reimbursed from the indigent defense fund because of a lack of public defenders. The AOC may wish to add a section to the form for private attorneys applying for reimbursement from the Indigent Defense Fund citing the reason for the appointment, i.e. conflict of interest or lack of public defender resources.

The Administrative Office of the Courts should integrate public defenders' case information with the Tennessee Court Information System (TnCIS). This could reduce duplication of data entry and ensure more accurate, uniform, and timely case and disposition information.

**APPENDIX A** 

		Public D	efender	Weighte	d Caselo	ad Mode	el Update	- FY 20	04			
	Judicial District		1	2	3	4	5	6	7	8	9	10
Line	Casetype	Workload Standard		Case Dispositions per District*								
1	Capital/1st Degree Murder	5	0	0	0	0	0	0	0	0	1	0
2	Felony**	233	924	695	776	851	556	2,929	666	815	455	799
3	Misdemeanor	500	1,636	2,729	3,059	2,038	2,168	10,839	2,238	1,590	769	1,097
4	Juvenile	273	64	109	579	98	177	1,373	68	132	54	262
5	Appeals	25	2	43	9	11	48	9	0	0	31	4
6	Probation Violations/Other	795	176	555	448	575	289	1,890	820	105	148	413
7	Total Dispositions		2,802	4,131	4,871	3,573	3,238	17,040	3,792	2,642	1,458	2,575
8	Total # of PDs		6	8	6	5	3	22	4	4	4	6
9	FTEs Needed for Year***		7.77	11.26	12.49	9.25	9.65	42.11	8.61	7.29	5.31	7.26
10	FTE Deficit or Excess		-1.77	-3.26	-6.49	-4.25	-6.65	-20.11	-4.61	-3.29	-1.31	-1.26
Source:	Conference of the Tennessee Publi	c Defenders and	d the Council	of Juvenile	and Family C	ourt Judges.						
*	Dispositions based on highest charg	ge at time of dis	position.									
**	Includes all classes of felonies.											
***	TEs needed are calculated by dividing number of dispositions by workload measure per case type.											

APPENDIX A

	Public Defender Weighted Caseload Model Update - FY 2004											
Judici	ludicial District 11 12 13 14 15 16 17 18 19 20 21									21		
Line	Casetype		Case Dispositions per District									
1	Capital/1st Degree Murder	0	0	0	0	0	0	0	0	4	0	0
2	Felony	3,340	688	1,026	482	1,174	894	1,089	1,738	1,006	4,311	560
3	Misdemeanor	7,440	1,590	1,938	979	2,424	1,413	1,930	1,212	3,409	14,615	874
4	Juvenile	1,093	76	107	102	247	3	421	0	0	1,640	70
5	Appeals	33	0	19	0	3	2	27	0	9	29	4
6	Probation Violations/Other	1,005	633	765	228	745	48	458	602	723	2,541	356
7	Total Dispositions	12,911	2,987	3,855	1,791	4,593	2,360	3,925	3,552	5,151	23,136	1,864
8	Total # of PDs	13	4	5	3	7	5	4	4	6	41	4
9	FTEs Needed for Year***	35.80	7.21	10.39	4.69	11.85	6.81	11.73	10.64	13.21	58.10	5.02
10	FTE Deficit or Excess	-22.80	-3.21	-5.39	-1.69	-4.85	-1.81	-7.73	-6.64	-7.21	-17.10	-1.02
Source:	Conference of the Tennessee Public D	efenders and	the Council	of Juvenile a	nd Family Co	ourt Judges.						
*	Dispositions based on highest charge a	at time of disp	osition.									
**	Includes all classes of felonies											
***	TEs needed are calculated by dividing number of dispositions by workload measure per case type											

**APPENDIX A** 

	Public Defender Weighted Caseload Model Update - FY 2004											
Judicia	Judicial District         22         23         24         25         26         27         28         29         30         31											
Line	Casetype		Case Dispositions per District Totals									
1	Capital/1st Degree Murder	1	0	0	0	1	0	0	0	44	0	51
2	Felony	873	576	643	973	817	369	516	496	5,640	109	36,786
3	Misdemeanor	3,022	1,654	1,135	1,614	1,547	528	627	663	14,076	123	90,976
4	Juvenile	0	379	29	391	75	42	65	129	0	22	7,807
5	Appeals	6	14	25	21	24	8	9	10	38	2	440
6	Probation Violations/Other	997	649	244	469	721	104	236	171	3,300	111	20,525
7	Total Dispositions	4,899	3,272	2,076	3,468	3,185	1,051	1,453	1,469	23,098	367	156,585
8	Total # of PDs	5	5	5	5	8	4	3	3	56	2	260
9	FTEs Needed for Year***	11.48	8.54	6.44	10.27	8.94	3.24	4.36	4.54	66.83	1.01	422.14
10	FTE Deficit or Excess	-6.48	-3.54	-1.44	-5.27	-0.94	0.76	-1.36	-1.54	-10.83	0.99	-162.14
Source:	Conference of the Tennessee Public D	efenders and	the Council	of Juvenile a	nd Family Co	ourt Judges.						
*	Dispositions based on highest charge at time of disposition.											
**	Includes all classes of felonies.											
***	FTEs needed are calculated by dividing number of dispositions by workload measure per case type.											

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#### APPENDIX B

#### **Factors Affecting Workload Nationally and in Tennessee**

As the preceding discussion indicates, factors such as geography and population density can contribute to regional variations in public defender practice. Moreover, national and local trends in criminal justice jurisprudence and legislative and law enforcement policies necessarily influence the way the public defender must approach his or her work. The public defender's duties are defined by not just the number of cases they must handle, but also their increasing complexity. This is the premise behind a case weighting study.

The ability to weight cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases handled by the program. However, this ability is particularly valuable in light of numerous factors affecting indigent defense caseloads nationally and locally. For instance, "tough on crime" legislation has been enormously popular around the country in recent years, resulting in new mandatory minimum sentences and habitual offender sentence enhancements. Each of these phenomena produces greater numbers of initial filings by prosecutors, as well as fewer cases which can be diverted out of the system at an earlier stage of litigation.

While violence-related drug crimes have been a main target of prosecution for several years, we have begun to see a considerable increase in arrests of non-violent drug offenders as well. Other important factors nationwide include:

- Changes in statutes, case law, or court rules in individual states that increase the types of cases or proceedings for which counsel is required;
- Changes in the economy, resulting in increased claims of indigence;
- Increased levels of appropriation to public safety and prosecutorial functions, without a commensurate increase to public defenders, resulting in greater numbers of prosecutions and case filings;

- Increased levels of appropriation to corrections and prison facilities, enabling greater numbers of offenders to be incarcerated;
- Changes in public policy or office policy within public defender offices requiring the performance of additional tasks, e.g., preparation of sentencing reports and diversion recommendations, indigency screening, and appellate review;
- Changes in prosecutorial practices such as the institution of career criminal prosecution programs or policies limiting plea bargaining in certain types of cases;
- Changes in the method of case disposition or the stage at which cases are disposed, e.g., increase in trials, more frequent use of juries, fewer dismissals, less plea bargaining at early stages of the case;
- Changes in the nature of offenses for public defenders with an increased percentage of cases exposing clients to substantial, mandatory imprisonment;
- Reductions in court processing time through added judgeships or other increases in court efficiency; and
- Changes in procedural handling (e.g., speedier trials or preliminary hearings) for certain classes of offenses.

The Tennessee caseload, while affected by national trends in criminal justice, has manifested its own unique workload characteristics. The following is a non-exhaustive list of Tennessee-specific information concerning public defender caseload:

- In 1991, the average annual caseload for TDPDC attorneys was 545 cases. By the next year, caseloads had risen 20% to 653 cases per attorney;
- In 1996 there was a 12% increase in the average caseload per attorney, and in both 1997 and 1998 the annual caseload grew by 8%. The current average, annual caseload is 670 cases per attorney;
- Homicide filings from 1997-1998 were nearly 30% higher than those in 1996-1997, and are currently at about 1,321 statewide.

#### **APPENDIX C** – Case Activity Codes

#### I. **CASE TYPE CODES** (Most Serious Charge) Capital/1st Degree Murder **Probation Violation** 46. Felony A **Post-Judgment Action** 41. 47. Felony B **Appeal** 42. 48. Felony C, D, E Other 43. 49. **Multiple Case Types, Case-Related** Misdemeanor 44. 60. Non-Case Related 45. Juvenile 70.

II. ACT	IVITY CODES
<ul> <li>A. Out-of-Court Case Related Activities</li> <li>1. Investigation</li> <li>2. Client Related Contact</li> <li>3. Social Services Activity</li> <li>4. Legal Research</li> <li>5. Conference with Supervisor or Colleague</li> <li>6. Conference with D.A. or Court</li> </ul>	<ul> <li>C. General Activities (Case or Non-Case Related)</li> <li>21. Waiting Time</li> <li>22. Travel Time</li> <li>23. Multiple Activities</li> <li>24. Supervision</li> </ul>
Personnel 7. Case Preparation  B. In-Court Case Related Activities	D. Non-Case Related Activities 25. Administrative Activity 26. Professional Development
8. Arraignment 9. Initial Hearing/First Appearance 10. Preliminary Hearing 11. Bond Hearing 12. Pre-Trial Conference/Status Hearing 13. Motions 14. Disposition/Plea/Settlement Day 15. Trial 16. Sentencing 17. Post-Trial/Post-Plea 18. Detention Hearing 19. Diversion 20 Waiver Hearing	27. Lunch & Other Breaks 28. Vacation & Time Away from Work 29. Training 30. Community Service & Public Education

#### III. OTHER ACTIVITY CODES

31. Other Activities

#### IV. DISPOSITION CODES

Withdrawal F. Plea/Sentence A. **Diversion Trial - Acquitted** B. G. C. **Bound Over to Circuit/Criminal Court** Trial-Convicted H. Committed to State Hospital/Incompetency **Dismissed** D. I. E. **Plea/Deferred Sentence** 

## TENNESSEE DISTRICT PUBLIC DEFENDER Daily Activity Log

ite:		Attorney #:	District #:					
Case Type Code	Activity Code	Disposition Code	Start Time (Hours: Minutes)	Stop Time (Hours: Minutes)				

### APPENDIX E

### District-by-District Public Defender Staffing Estimates<sup>1</sup>

Below is an estimated, district-by-district staffing chart. The Spangenberg Group has several reservations regarding this chart and strongly emphasizes that this estimate should not be used as the final determination of public defender staffing. We say this for the following reasons:

- 1. The Spangenberg Group only conducted site visits at public defender offices in six of the judicial districts. We did not visit each district in the study, let alone every district in the state. Little, if any, information was provided to us about the nature of these other districts' practices. Final staffing determinations must take into consideration:
- 2. The working environment in each district, particularly the ratio of support staff (legal secretaries, investigators, etc.) to attorneys. Districts that have more support staff may require less attorneys than a similar sized district with less support staff;
- 3. The number of counties in a judicial district. Some districts encompass several counties which require staff to cover different courtrooms at the same time. Simple staffing assessments based solely on disposition counts do not account for this situation.
- 4. The number of courtrooms that must be staffed in a district. Some districts have received additional judges in recent years which leads to additional courtrooms that must be staffed by the public defenders. Districts that have similar caseloads may need different attorney staffing levels due to the additional work created by the new judgeships.
- 5. The caseload carried by the elected public defender. It was our observation that many elected public defenders carry the same caseload as their assistant public defenders. District Public Defenders must be allowed time to manage the office and to oversee the practice of his or her assistants. The extent to which some Public Defenders carry a higher caseload than others must be a factor in determining additional staffing.
- 6. The experience level of the attorneys presently working in each districts. A district that has a heavier serious felony caseload would need more experienced attorneys than a district that has a heavier misdemeanor caseload.
- 7. Due to the individual nature of Capital/1st Degree Murder cases, it is impossible to project when or where such cases will occur. It is quite possible that a district that has not had to defend a Capital/1st Degree Murder Case in several years will have such a case in the future. As such, staffing estimates will need to be altered to accommodate these circumstances. Additionally, the methodology used to determine the annual caseload greatly underestimates the number of Capital/1st Degree Murder cases that can be expected to occur. The report is not meant to imply that only one attorney is needed to handle all of the capital cases in the state.

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<sup>&</sup>lt;sup>1</sup> The Spangenberg Group, Tennessee Public Defender Case-Weighting Study, April 1999, Appendix D.

- 8. It is our belief that a large percentage of juvenile defendants in the state go to court without counsel. Attorney staffing estimates will change if juvenile cases are handled by all of the districts.
- 9. The staffing estimates are based on charge information as reported by each district from FY1998. As we found out, case counting procedures and disposition coding was not uniform throughout the state during this time period. Though we are confident about the aggregate case counts statewide, we are less sure of the district-by-district counts. Districts should not be rewarded with additional staff nor penalized with losing staff due to improper case counts and coding practices. A comprehensive, district-by-district analysis of case counting and disposition coding practices is required to guarantee the validity of individual districts' staffing projections.
- 10. At this time, we do not have good data on the breakdown of Felony A, Felony B and Felony C, D & E cases within each district. Districts that have more serious felony cases will require more attorneys than a district with the same aggregate felony caseload, but with fewer serious cases.
- 11. At present, the estimated staffing chart does not take into account the differences in practices between urban, rural and transitional districts. The extra travel and waiting time experienced in rural and transitional districts must be taken into account.
- 12. The estimated staffing chart does not consider the projected increases or decreases in judge and prosecutor positions resulting from the other two studies conducted by APRI and NCSC. Increases in either prosecutor positions or judgeships in a district will significantly alter the public defender needs in each district.

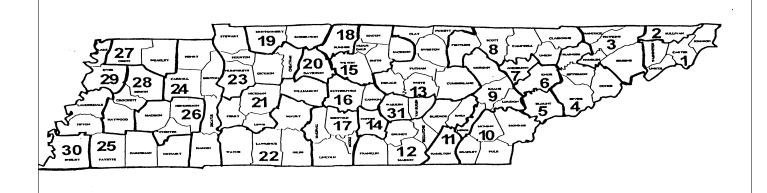
## Appendix D **Public Defender Estimated Staffing**

District	Annual Caseload	Required Staff	Current Staff	New Staff
1	2,543	8	6	2
2	2,716	10	8	2
3	4,769	8	6	2
4	2,119	7	5	2
5	1,473	4	3	1
6	8,810	24	21	3
7	1,125	4	4	0

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8	1,943	6	5	1
9	1,463	5	4	1
10	1,806	6	6	0
11	4,824	13	11	2
12	2,232	6	5	1
13	1,985	6	5	1
14	1,512	4	4	0
15	2,398	6	4	2
16	2,044	6	5	1
17	2,385	6	4	2
18	1,879	6	4	2
19	5,039	9	5	4
20	20,465	47	38	9
21	2,020	6	4	2
22	2,475	7	5	2
23	1,692	5	4	1
24	1,286	5	5	О
25	2,559	8	5	3
26	2,895	9	7	2
27	1,242	4	4	0
28	1,404	4	3	1
29	916	4	3	1
30	22,461	61	55	6
31	448	2	2	0
Total	112,930	306	250	56

### Appendix F

### TENNESSEE JUDICIAL DISTRICTS



- District 1 Carter, Johnson, Unicoi, and Washington Counties
- District 2 Sullivan County
- District 3 Greene, Hamblen, Hancock, and Hawkins Counties
- District 4 Cocke, Grainger, Jefferson, and Sevier Counties
- District 5 Blount County
- District 6 Knox County
- District 7 Anderson County
- District 8 Campbell, Claiborne, Fentress, Scott, and Union Counties
- District 9 Loudon, Meigs, Morgan, and Roane Counties
- District 10 Bradley, McMinn, Monroe, and Polk Counties
- District 11 Hamilton County
- District 12 Bledsoe, Franklin, Grundy, Marion, Rhea, and Sequatchie Counties
- District 13 Clay, Cumberland, DeKalb, Overton, Pickett, Putnam, and White Counties
- District 14 Coffee County
- District 15 Jackson, Macon, Smith, Trousdale, and Wilson Counties
- District 16 Cannon and Rutherford Counties
- District 17 Bedford, Lincoln, Marshall, and Moore Counties
- District 18 Sumner County
- District 19 Montgomery and Robertson Counties
- District 20 Davidson County
- District 21 Hickman, Lewis, Perry, and Williamson Counties
- District 22 Giles, Lawrence, Maury, and Wayne Counties
- District 23 Cheatham, Dickson, Houston, Humphreys, and Stewart Counties
- District 24 Benton, Carroll, Decatur, Hardin and Henry Counties
- District 25 Favette, Hardeman, Lauderdale, McNairy, and Tipton Counties
- District 26 Chester, Henderson, and Madison Counties
- District 27 Obion and Weakley Counties
- District 28 Crockett, Gibson, and Haywood Counties
- District 29 Dyer and Lake Counties
- District 30 Shelby County
- District 31 Van Buren and Warren Counties

#### APPENDIX G

## Supreme Court Rule 13. Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants.

Section 1. Right to counsel and procedure for appointment of counsel.

(a) The purposes of this rule are to establish qualifications for counsel in capital cases, and to establish qualifications and procedures for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel for indigent defendants in capital and non- capital trials, direct appeals, post-conviction proceedings and in any other proceeding in which a defendant has a statutory or constitutional right to appointed counsel. This rule is intended to meet the standards set forth in Section 107 of the Antiterrorism and Effective Death Penalty Act of 1996.

- (b) There shall be maintained for each trial court exercising criminal jurisdiction a roster of attorneys who have demonstrated the commitment and proficiency necessary for providing effective assistance of counsel from which roster appointments will be made, provided a court may appoint attorneys whose names are not on the roster if necessary to obtain competent counsel according to the provisions of this rule.
- (c) All general sessions, juvenile, trial, and appellate courts shall appoint counsel to represent indigent defendants and other parties who have a constitutional or statutory right to representation (herein "indigent defendant" or "defendant") according to the procedures and standards set forth in this rule.
- (d) In the following cases and in all other cases required by law, the court or appointing authority shall advise any party who is without counsel that he or she has the right to be represented by counsel throughout the case and that counsel will be appointed to represent the party if he or she is indigent and requests the appointment of counsel. The child who is or may be the subject of a report or investigation of abuse or neglect and in proceedings to terminate parental rights shall not be required to request appointment of counsel.
- (1) Cases in which an adult is charged with a felony or a misdemeanor and is in jeopardy of incarceration;
- (2) Cases in which a juvenile is charged with juvenile delinquency by the commission of an act which if committed by an adult would be a misdemeanor or a felony;
- (3) In contempt of court proceedings in which the defendant is in jeopardy of incarceration;
- (4) In proceedings initiated by a petition for habeas corpus, early release from incarceration, suspended sentence or probation revocation;

- (5) In post-conviction proceedings in non-capital cases, subject to the provisions of Rule 28, Supreme Court Rules;
- (6) In all post-conviction proceedings in capital cases;
- (7) In cases under Title 37 of Tenn. Code Ann. in which allegations against the parents could result in finding the child dependent or neglected, or in which there is a petition for termination of parental rights.
- (8) The court shall appoint a guardian ad litem for every child who is or may be the subject of report of abuse or neglect or an investigation report under §§37-1-401-37-1-411. The appointment of the guardian ad litem shall be made upon the filing of the petition or upon the court's own motion, based upon knowledge or reasonable belief that the child may have been abused or neglected. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than each child.
- (9) In proceedings to terminate parental rights the court shall appoint a guardian ad litem for the child, unless the termination is uncontested. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than each child.
- (10) In parole revocation proceedings pursuant to the authority of state and or federal law.
- (11) In judicial proceedings under Chapter 3 through 8 of Title 33, Mental Health Law.
- (12) In cases in which a superintendent of a mental health facility files a petition under the guardianship law, Title 34.
- (13) In cases under Tenn. Code Ann. §37-10-304 and Supreme Court Rule 24 relative to petitions for waiver of parental consent for abortions.
- (14) In cases in which a juvenile is charged upon three (3) or more court proceedings to be unruly as defined in Tenn. Code Ann. §37-1-126(a).
- (e) Whenever a party to any case in Section 1(d) states to the court that he or she is financially unable to obtain counsel and requests the appointment of counsel, the party shall be required to complete an Affidavit of Indigency Form provided by the Administrative Office of the Courts. The court shall upon inquiry make a finding as to the indigency of the party pursuant to the provisions of Tenn. Code

Ann. § 40-14-202. The court shall enter an order appointing counsel upon a finding that the defendant is indigent and accepts the offer of appointed counsel, or is unable competently to decide whether to accept or reject the offer. The court shall not appoint counsel upon finding that the party rejected the offer of counsel with an understanding of the legal consequences of the rejection, or upon finding that the party is not indigent.

- (f) The court shall appoint separate counsel for indigent defendants having interests that cannot be properly represented by the same counsel or when other good cause is shown.
- (g) The court shall not make an appointment which creates a total work load on counsel so excessive that it effectively prevents the rendering of effective representation for the defendant in accordance with constitutional and professional standards.
- (h) The court shall designate the public defender, the post-conviction defender, their staffs or other attorneys employed by the state for that purpose (hereinafter "public defender") as appointed counsel if available and qualified pursuant to this rule; and, if the public defender is not available or qualified, the court shall designate counsel from a roster of private attorneys approved by the court. Appointment of public defenders shall be subject to the limitations of Tenn. Code Ann. § 8-14-201 et seq. The defendant shall not have the right to select counsel to be appointed. If a competent defendant refuses to accept the services of appointed counsel, such refusal shall be written and signed by the defendant in the presence of the court, which shall acknowledge thereon the signature of the defendant and make the written refusal a part of the record in the case. In that event, the defendant may act pro se without the assistance or presence of counsel.
- (i) Counsel appointed shall continue to act for the defendant throughout the proceedings in the court in which the appointment is made and in any subsequent proceedings or appeals until the case has been concluded or counsel has been relieved by the court.
- (j) The failure of any court to follow the provisions of this rule shall not constitute grounds for relief from a judgment of conviction or sentence. The failure of appointed counsel to meet the qualifications set forth in this rule shall not be deemed evidence that counsel did not provide effective assistance of counsel in a particular case.

Section 2. Qualifications and compensation of counsel in non-capital cases.

(a) Before counsel or a guardian ad litem is appointed for an indigent defendant, parent, or child, the court shall be satisfied that the attorney to be appointed is capable of providing the defendant, parent or child with effective assistance of counsel.

- (b) Appointed counsel, other than public defenders, shall be entitled to reasonable compensation for their services rendered as provided in this rule. Cocounsel or associate attorneys in non-capital cases may not be compensated. Reasonable compensation shall be determined by the court in which services are rendered, subject to the limitations set forth in this rule, which limitations are declared to be reasonable. The limitations apply to compensation for services rendered in each court, municipal, juvenile, or general sessions; criminal, circuit, or chancery; Court of Appeals or Court of Criminal Appeals; the Tennessee Supreme Court; and the United States Supreme Court.
- (c) The hourly rate for appointed counsel in non-capital cases shall not exceed forty dollars (\$40) per hour for time reasonably spent in trial preparation and fifty dollars (\$50) per hour for time reasonably spent in court.

  For the purposes of this rule, "time reasonably spent in court" means time spent in courtroom proceedings before a judge.
- (d) Except as provided in Section 2(e) of this rule, the compensation allowed appointed counsel for services rendered in a non- capital case shall not exceed the amounts indicated. The maximum compensation allowed shall be determined by the original charge or allegations in the case.
- (1) Five hundred dollars (\$500) in:
- (A) Cases in which an adult or a juvenile is charged with a misdemeanor and is in jeopardy of incarceration;
- (B) Dependent or neglected child cases;
- (C) Contempt of court cases where an adult or juvenile is in jeopardy of incarceration.
- (D) For guardian ad litem representation for every child who is or may be the subject of a report of abuse or neglect or an investigation report under §§37-1-401 37-1-411, from the filing of the dependency petition through the dispositional hearing.
- (E) For guardian ad litem representation for every child who is or may be the subject of a report of abuse or neglect or an investigation report under §§37-1-401 37-1-411, for all post- dispositional proceedings;
- (F) In parole revocation proceedings pursuant to the authority of state and or federal law.
- (G) In judicial proceedings under Chapter 3 through 8 of Title 33, Mental Health Law.

- (H) In cases in which a superintendent of a mental health facility files a petition under the guardianship law, Title 34.
- (I) In cases under Tenn. Code Ann. §37-10-304 and Supreme Court Rule 24 relative to petitions for waiver of parental consent for abortions.
- (J) In cases in which a juvenile is charged upon three (3) or more court proceedings to be unruly as defined in Tenn. Code Ann. §37-1-126(a).
- (2) One thousand dollars (\$1,000) in:
- (A) Preliminary hearings in general sessions and municipal courts in which an adult is charged with a felony;
- (B) Cases in trial courts in which the defendant is charged with a felony;
- (C) Direct and interlocutory appeals;
- (D) Cases in which a defendant is applying for early release from incarceration or a suspended sentence;
- (E) Non-capital post conviction and habeas corpus proceedings;
- (F) Probation revocation proceedings;
- (G) Cases in which a juvenile is charged with a non-capital felony;
- (H) Proceedings against parents in which allegations against the parents could result in termination of parental rights.
- (I) For guardian ad litem representation of every child in a termination of parental rights case.
- (J) All other non-capital cases in which the defendant has a statutory or constitutional right to be represented by counsel.
- (e) If the court in a non-capital case shall certify to the director of the Administrative Office of the Courts that the case requires extended or complex representation within the meaning of Tenn. Code Ann. § 40-14-207(a)(2) or an amount in excess of the maximum amount allowed by section 2(d) is necessary to provide reasonable compensation to appointed counsel, the compensation shall be limited to the amount stated in this subsection. In addition, all payments under this section 2(e) must be submitted to the director for approval; but, if a payment under this section 2(e) is not approved by the director, the director shall transmit the claim to the chief justice for approval or disapproval.

- (1) One thousand dollars (\$1,000) in those categories of cases described in section 2(d)(1) of this rule;
- (2) Two thousand dollars (\$2,000) in those categories of cases described in section 2(d)(2)(A), (C), (D), (E), (F),(G),(H),(I) and (j) of this rule; and
- (3) Three thousand dollars (\$3,000) in that category of cases described in section 2(d)(2)(B).
- (f) The Chief Justice may waive the maximum allowable amount in Section 2(e)(3) in a homicide case if the Chief Justice finds that extraordinary circumstances exist and the failure to waive the maximum would result in undue hardship.

Section 3. Minimum qualifications and compensation of counsel in capital cases.

- (a) For the purposes of this rule, a capital case is a case in which a defendant is being tried for first degree murder and the state has filed notice to seek the death penalty as provided in Tenn. Code Ann. §39-13- 208, and Rule 12.3(b) of the Tennessee Rules of Criminal Procedure, and no order withdrawing the notice has been filed.
- (b) The court shall appoint two attorneys to represent a defendant at trial in a capital case. At least one of the attorneys appointed must maintain a law office in the state of Tennessee and have significant experience in Tennessee criminal trial practice. The counsel appointed shall be designated "lead counsel" and "cocounsel."
- (c) Lead counsel must:
- (1) be a member in good standing of the Tennessee bar or be admitted to the practice pro hac vice;
- (2) have for at least three years regularly represented defendants in criminal jury trials;
- (3) have had a minimum of twelve hours of specialized training in the defense of defendants charged with a capital offense; and
- (4) have at least one of the following:
- (A) experience as lead counsel in the jury trial of at least one capital case;
- (B) experience as co-counsel in the trial of at least two capital cases;
- (C) experience as co-counsel in the trial of a capital case and experience as lead or sole counsel in the jury trial of at least one murder case; or

- (D) experience as lead counsel or sole counsel in at least three murder jury trials; or one murder jury trial and three felony jury trials.
- (d) Co-counsel must:
- (1) be a member in good standing of the Tennessee bar or be admitted to practice pro hac vice;
- (2) have had a minimum of 12 hours of specialized training in the defense of defendants charged with a capital offense; and
- (3) have at least one of the following qualifications:
- (A) qualify as lead counsel under (c) above;
- (B) experience as sole counsel, lead counsel, or co-counsel in a murder jury trial.
- (e) The attorneys who represented the defendant in the trial court in a capital case may be designated by the trial court to represent the defendant on direct appeal, provided either of the trial attorneys qualifies as new appellate counsel under section 3(g) of this rule and both attorneys are available for appointment. However, new counsel will be appointed to represent the defendant if the trial court, or the court in which the case is pending, shall determine that the appointment of new counsel is necessary to provide the defendant with effective assistance of counsel or that the best interest of the defendant requires the appointment of new counsel.
- (f) If new counsel are appointed to represent the defendant on direct appeal, at least one attorney must be a member in good standing of the Tennessee Bar and maintain a law office in the state of Tennessee. If the other attorney appointed is not a member of the Tennessee Bar, he or she must be admitted to practice pro hac vice;
- (g) Counsel in cases on direct appeal, regardless of any prior representation of the defendant, must have three years of litigation experience in criminal trials and appeals; and they must have at least one of the following qualifications: experience as counsel of record in the appeal of a capital case; or experience as counsel of record in the appeal of at least three felony convictions within the past three years and a minimum of six hours of specialized training in the trial and appeal of capital cases.
- (h) Counsel eligible to be appointed as post-conviction counsel in capital cases must have the same qualifications as new appellate counsel; or have trial and appellate experience as counsel of record in state post-conviction proceedings in three felony cases, two homicide cases, or one capital case. They also must have a working knowledge of federal habeas corpus practice, which may be satisfied by

six hours of specialized training in the representation in federal courts of defendants under the sentence of death imposed in state courts; and they must have not previously represented the defendant at trial or on direct appeal in the case for which the appointment is made, unless the defendant and counsel expressly consent to continued representation.

- (i) A prisoner who seeks relief from his or her conviction or sentence in a state trial or appellate court when his or her execution is imminent is entitled to the representation of no more than two attorneys, at least one of whom is qualified as a post conviction counsel as set forth in Section 3(h). For purposes of this rule execution is imminent if the prisoner has unsuccessfully pursued all state and federal remedies for testing the validity and correctness of his or her conviction and sentence and the Tennessee Supreme Court has set an execution date.
- (j) Appointed counsel, other than public defenders, in capital cases shall be entitled to reasonable compensation as determined by the court in which such services are rendered. Compensation shall be limited to the two attorneys actually appointed in the case. Appointed counsel, in a capital case, may submit interim claims for compensation as approved by the court in which such services are rendered.
- (k) Appointed counsel in capital cases shall be compensated on hourly rates which shall be at least the following:
- (1) Lead counsel out-of-court seventy-five dollars (\$75);
- (2) Lead counsel in-court one hundred dollars (\$100);
- (3) Co-counsel out-of-court sixty dollars (\$60);
- (4) Co-counsel in-court eighty dollars (\$80);
- (5) Post-conviction counsel out-of-court sixty dollars (\$60);
- (6) Post-conviction counsel in-court eighty dollars (\$80).
- (7) Counsel appointed pursuant to (i) eighty dollars (\$80).
- (l) If the notice of intent to seek the death penalty is withdrawn at least thirty (30) days prior to trial, the trial court shall enter an order relieving one of the attorneys previously appointed. In these circumstances, the trial judge may grant the defendant, upon motion, a reasonable continuance of the trial. If the notice is withdrawn less than thirty (30) days prior to trial, the trial judge may either enter an order authorizing the two attorneys previously appointed to remain on the case for the duration of the present trial, or enter an order relieving one of the attorneys previously appointed and granting the defendant, upon motion, a reasonable continuance of the trial. [Amended by order filed April,29 2003.]

Section 4. Payment of expenses incident to representation.

- (a) Appointed counsel, experts, and investigators may be reimbursed for certain necessary expenses directly related to the representation of indigent defendants. [Amended by ordder filed June 23, 2003. Effective July 1, 2003.]
- (1) Expenses for long distance telephone calls, copying, printing, and travel within the state, approved by the court as reasonably necessary, will be reimbursed. Claims for reimbursement for long distance telephone calls must be supported by a log showing the date the call was made, the person or office called, the purpose of the call, and the duration of the call stated in one-tenth (1/10) hour segments. Travel within the state will be reimbursed in accordance with Judicial Department travel regulations.
- (2) Funding may be obtained for other expenses directly related to the representation, including travel outside the state, but only upon prior authorization by the court in which the representation is rendered and by prior approval of the administrative director of the courts. Authorization of expenses shall be sought by motion to the court. The motion shall include both an itemized statement of the costs and specific factual allegations demonstrating that the expenses are necessary to the effective representation of the defendant. The court shall enter an order which evidences the action taken on the motion. The order shall recite the specific facts demonstrating that the expenses are necessary to the effective representation of the defendant or incorporate by reference and attach the defense motion which includes the specific facts demonstrating that the expenses are necessary to the effective representation of the defendant. The order and any attachments shall be submitted to the administrative director for prior approval before the expenses can be incurred. [Amended by order filed June 23, 2003. Effective July 1, 2003.]
- (3) Appointed counsel may not be reimbursed for the services of a paralegal, law clerk, secretary, legal assistant or other administrative assistants.

Effective September 8, 2003, the Supreme Court adopted the following interim rule for payment of spoken foreign language interpreters and translators. The numbering of this section reflects the placement of this provision in the proposed amendment to Supreme Court Rule 13 which can be found in its entirety HERE.

Section 4. (a)(3)(K) Spoken Foreign Language Interpreters and Translators - (i) The reasonable costs associated with an interpreter's and/or translator's services will be compensated when a trial court finds, upon motion of counsel, or sua sponte when counsel has not been appointed, that an indigent party has limited English proficiency ("LEP"). The term "interpret" refers to the process of transmitting the spoken word from one language to another. The term "translate" refers to the process of transmitting the written word from one language to another.

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- (ii) This section rather than Tennessee Rule of Criminal Procedure 28 applies when an indigent party requires the services of a spoken foreign language interpreter. (iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters \$50 per hour; Registered Interpreters \$40 per hour; Non-credentialed Interpreters \$30 per hour. For languages other than Spanish: if the court finds that these rates are inadequate to secure the services of a qualified interpreter, the court shall make written findings regarding such inadequacy and determine a reasonable rate for a qualified interpreter.
- (iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate. (v) Mileage, lodging, meals, and parking expenses may be reimbursed as provided in Section 4(a)(3)(B), (C), (D), and (E).
- (vi) The court shall determine if it is reasonably necessary for documents to be translated as part of assuring adequate representation of an indigent party with LEP. Document translation shall be compensated at no more than twenty (20) cents per word. For languages other than Spanish: if the court finds that these rates are inadequate to secure the services of a qualified translator, the court shall make written findings regarding such inadequacy and determine a reasonable per word translation rate.
- (vii) Claims for compensation of interpreters and translators shall be submitted to the Administrative Office of the Courts on forms provided by the Administrative Office of the Courts.

### Section 5. Expert services.

- (a) In the trial and direct appeals of all criminal cases in which the defendant is entitled to appointed counsel and in the trial and appeals of post-conviction proceedings in capital cases, the court in an ex parte hearing may in its discretion determine that investigative or expert services or other similar services are necessary to ensure that the constitutional rights of the defendant are properly protected. If such determination is made, the court may grant prior authorization for these necessary services in a reasonable amount to be determined by the court. The authorization shall be evidenced by a signed order of the court. The order shall provide for the payment or reimbursement of reasonable and necessary expenses by the administrative director of the courts. (See Tenn. Code Ann. § 40- 14-207(b); State v. Barnett, 909 S.W.2d 423 (1995); and Owens v. State, 908 S.W.2d 923 (1995).)
- (b) Counsel for the defendant must seek authorization for the services considered necessary by motion delivered to the judge of the court setting forth the nature of the services, the name and location of the person proposed to provide the services, an explanation for not obtaining the services in Tennessee if the person proposed to furnish the services is not located in Tennessee, the means, the date,

and time and the location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs, such as court appearances by experts. If the trial court finds that the defendant has satisfied these threshold requirements, the trial court must conduct an ex parte hearing on the motion and determine if the requested services are necessary to ensure the protection of the defendant's constitutional rights.

- (c) If, after conducting a hearing, the court determines that the requested services are necessary to ensure the protection of the defendant's constitutional rights, the court shall enter an order authorizing the requested expert or investigative services. The order shall recite the specific facts demonstrating that the expenses are necessary to ensure the protection of the defendant's constitutional rights or incorporate by reference and attach the defense motion which includes the specific facts demonstrating that the expenses are necessary to ensure the protection of the defendant's constitutional rights. See, e.g., State v. Barnett, 909 S.W.2d 423 (Tenn. 1995); and Owens v. State, 908 S.W.2d 923 (Tenn. 1995). Once the services are authorized by the court in which the case is pending, the order and any attachments must be submitted for prior approval to the administrative director. If the administrative director denies prior approval of the request, or the request exceeds five thousand dollars (\$5,000) per expert, or the hourly rate of any person or entity exceeds one hundred and fifty dollars (\$150), the claim shall be transmitted to the chief justice for disposition and prior approval. [Amended by order filed June 23, 2003. Effective July 1, 2003.]
- (d) Payment may be made directly to the person, agency, or entity providing the services upon certification by counsel for the defendant that the services authorized by order of the court have been rendered. Requests for payment will be supported by a copy of the court order authorizing the expenditure, approval by the chief justice where required, and counsel's certification.

Section 6. Review of claims for compensation and reimbursement of expenses.

(a) Claims for compensation, expert services, and litigation expenses shall be filed by counsel with the Administrative Office of the Courts on forms approved by that office. Time spent by counsel on a single case or proceeding shall be included in a single claim for compensation. Counsel will be held to a high degree of care in the keeping of records supporting all claims and in the application for payment. The Administrative Office of the Courts shall examine and audit all claims for attorneys' fees and expenses to insure compliance with these rules and other statutory requirements. After such examination and audit and given due consideration to state revenues, the Administrative Director shall make a determination as to the compensation to be paid to each attorney and/expert and cause payment to be issued in satisfaction thereof. The determination by the Administrative Director shall be final, except as provided in this section. If the claim for compensation pertains to a capital case, the Chief Justice of the Supreme Court must approve the amount found by the Administrative Director

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to be owed prior to the payment being made to the attorney or expert unless the Chief Justice has previously approved the expert service pursuant to Section 5.

- (b) Any party aggrieved by the final action taken with regard to the award of compensation for appointed counsel, the authorization for expenses, or the authorization for services may petition the Supreme Court for review of that action within thirty (30) days from the date thereof, which petition the court may grant or deny. Upon grant of the petition to review, that portion of the record relevant to the issue raised shall be forwarded to the clerk of the Supreme Court at Nashville within thirty (30) days of the date on which the petition was granted. Review shall be de novo upon the record unless the court requests additional information.
- (c) There shall be a presumption that the action taken by the court is correct.
- (d) The provisions of this rule will be followed where by their terms are applicable regardless of the agency of the state against whose budget the payments are charged.

[As amended by orders entered December 1, 1982; November 7, 1983, August 20, 1984; August 4, 1986; May 12, 1992; February 3, 1993; effective March 9, 1993, July 1, 1993; August 8, 1993; August 17, 1994; April 3, 1997; April 10, 1997; and February 4, 1998; as amended by orders filed November 23, 1998; December 2, 1998; January 25, 2001; and by order filed June 25, 2001.]

1990, banuary 2	25, 2001, and by order in	ica vanc 25, 2001.]	
IN THE	COURT FOR	COUNTY	
STATE OF TEN		Case No	
VS.			
Defendant			
Comes the defe	TIDAVIT OF INDIGENC indant and, subject to th please list, circle, compl	e penalty of perjury, makes oath to the	
	]2.	Social Security	
	ames ever used:□		
5 Telephone N	Jos · (Home)	(Work)	

(Other)□

6. Are you working anywhere? Yes ( ) No ( ) Where□
7. How much do you make?□ (weekly, monthly, etc.) 8. Birthdate:□
9. Do you receive any governmental assistance or pensions (disability, SSI, AFDC, etc.)?
Yes () No () What is its value? (weekly, monthly, etc.)
10. Do you own any property (house, car, bank acct., etc.): Yes ( ) No ( ) What is its value?
11. Are you, or your family, going to be able to post your bond? Yes ( ) No ( )
12. Are you, or your family, going to hire a private attorney? Yes ( ) No ( )
13. Are you now in custody? Yes ( ) No ( ) If so, how long have you been in custody?
(If the defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.)
PART II  14. Names & ages of all dependents: relationship
relationship
relationship
15. I have met with following lawyer(s), have attempted to hire said lawyer(s) to represent me, and have been unable to do so:
Name
Address
16. All my income from all sources (including, but not limited to wages, interest, gifts, AFDC, SSI, social security, retirement, disability, pension, unemployment, alimony, worker's compensation, etc.):
\$ per from

\$	per	from
\$	per	from
17. All n	noney available to me from a	any source: A. Cash
B. Checl	king, Saving, or CD Account	(s)-give bank, acct. no., balance
C. Debts D. Credi America	s owed me t Card(s)-give acct. no., bala n Express, etc.)	nce, credit limit, and type (Visa, Mastercard
	·	
		e, solely or jointly, within the last six monthucks, motorcycles, farm equip., boats etc.):
_	value \$	amt. owed
	value \$	amt. owed
	value \$	amt. owed
	eal estate owned by me, sole ng land, lots, houses, mobile	ely or jointly, within the last six months homes, etc.):
_	value \$	amt. owed
_	value \$	amt. owed
	assets or property not alread l in the future:	ly listed owned within the last six months or
	value \$	amt. owed
	value \$	amt. owed
	last income tax return I filed	amt. owed d was for the year and it reflected a ne

\$ I will file a copy of same within one week if required.
22. I am out of jail on bond of \$ made by The money to make bond, \$ was paid by
PART III 23. Acknowledging that I am still under oath, I certify that I have listed in Parts I and II all assets in which I hold or expect to hold any legal or equitable interest.
24. I am financially unable to obtain the assistance of a lawyer and request the court to appoint a lawyer for me.
25. I understand that it is a Class A misdemeanor for which I can be sentenced to jail for up to 11 months 29 days or be fined up to \$2500.00 or both if I intentionally or knowingly misrepresent, falsify, or withhold any information required in this affidavit. I also understand that I may be required by the Court to produce other information in support of my request for an attorney.
This,
Defendant
Sworn to and Subscribed before me this day of,
Clerk Judge

# Offices of Research and Education Accountability Staff

### **Director**

◆Ethel Detch

## Assistant Director (Research)

◆Douglas Wright

## Assistant Director (Education Accountability)

Phil Doss

### **Principal Legislative Research Analyst**

**♦**Kim Potts

### **Senior Legislative Research Analysts**

- **♦**Bonnie Adamson
- ◆Kevin Krushenski Russell Moore Margaret Rose Greg Spradley

### **Associate Legislative Research Analysts**

Corey Chatis Jessica Gibson Jessica King Erin Lyttle Sonya Phillips

### **Executive Secretary**

- ◆Sherrill Murrell
- ◆indicates staff who assisted with this project